No. 88-1098

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

WILLIAM BERG,

Petitioner,

v.

DR. JOHN HUNTER, individually and as President of the College of Lake County, Illinois; JAMES DOPPKE, individually and as Vice President of Academic Affairs of the College of Lake County, Illinois; LAWRENCE MATTHEWS, individually and as Associate Dean and Chairman of Health, Physical Education, Recreation, Intramurals, and Athletics of the College of Lake County, Illinois; BOARD OF TRUSTEES OF ILLINOIS COMMUNITY COLLEGE DISTRICT NO. 532; and ELEANOR ROSTRON, RICHARD A. ANDERSON, NANCY BLOCK, MILLICENT BERLIANT, JAMES LUMBER, RICHARD BRYAN, and NAN FAIRHURST, individually and jointly as Members of the Board of Trustees of Illinois Community College District No. 532,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

I. Whether the circuit court misapplied the decisions in Pickering, Connick, and Rankin when it decided that speech by a public employee accusing the college president of publicly misrepresenting employee salaries during a period of budget deficits while actually increasing salaries at an inflated rate in order to govern patronage support at the college was unprotected speech, without evidence of record establishing actual interference with the effective functioning of the college, and/or whether the decision is in conflict with decisions of the other circuit courts?

II. Whether the granting of summary judgment in favor of a public employer under the Pickering, Connick, and Rankin balancing test when there are genuine

issues of material fact as to whether speech involving clear public concern interferred with the effective functioning of the employer was in direct conflict with the court's decisions in Celotex Corporation v. Catrett and Anderson v. Liberty Lobby, Inc., and/or in conflict with the decisions of the circuit courts?

III. Whether the court should exercise its supervisory power when a circuit court searches the record in an attempt to find a factual basis to defeat a First Amendment claim and sua sponte applies the Pickering, Connick, and Rankin balancing test for the first time on appeal absent an adequate evidentiary record and without affording the parties the opportunity to supplement the record and/or brief the issues upon which the court based its opinion.

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I.

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II.

THE GRANTING OF SUMMARY JUDGMENT IN FAVOR OF A PUBLIC EMPLOYER UNDER THE PICKERING, CONNICK, AND RANKIN BALANCING TEST WHEN THERE WERE GENUINE ISSUES OF MATERIAL FACT AS TO WHETHER SPEECH INVOLVING CLEAR PUBLIC CONCERN INTERFERRED WITH THE EFFECTIVE FUNCTIONING OF THE EMPLOYER WAS IN DIRECT CONFLICT WITH AND CELOTEX CORPORATION V. CATRETT AND ANDERSON V. LIBERTY LOBBY, INC., AND IN CONFLICT WITH THE DECISIONS OF THE CIRCUIT COURTS.

III.

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In The

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WILLIAM BERG,

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DR. JOHN HUNTER, individually and as President of the College of Lake County, Illinois; **JAMES DOPPKE**, individually and as Vice President of Academic Affairs of the College of Lake County, Illinois; **LAWRENCE MATTHEWS**, individually and as Associate Dean and Chairman of Health, Physical Education, Recreation, Intramurals, and Athletics of the College of Lake County, Illinois; **BOARD OF TRUSTEES OF ILLINOIS COMMUNITY COLLEGE DISTRICT NO. 532**; and **ELEANOR ROSTRON, RICHARD A. ANDERSON, NANCY BLOCK, MILLICENT BERLIANT, JAMES LUMBER, RICHARD BRYAN**, and **NAN FAIRHURST**, individually and jointly as Members of the Board of Trustees of Illinois Community College District No. 532,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The petitioner William Berg

respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled proceeding on August 10, 1988.

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 854 F.2d 238, and is reprinted as Appendix A hereto (App. 1).

The memorandum opinion of the United States District Court for the Northern District of Illinois, Eastern Division (Marshall, D.J.) has not been reported, and is reprinted as Appendix B hereto (App. 26).

JURISDICTION

Invoking federal jurisdiction under

42 U.S.C. §§1983 and 1985(3), and 28 U.S.C. §1343, the petitioner brought this case under the First and Fourteenth Amendments to the United States Constitution and pendent jurisdiction in the Northern District of Illinois, Eastern Division. On March 18, 1987, the District Court granted the respondents' motion for summary judgment based upon its finding that petitioner's speech did not involve issues of public concern, and entered judgment dismissing all counts in the complaint. See App. 26, infra. All post-judgment motions were denied.

On petitioner's appeal pursuant to 28 U.S.C. §§1291 and 1294, the Seventh Circuit on August 10, 1988, entered a judgment and an opinion affirming the district court 's judgment on other grounds, viz., that petitioner's speech was constitutionally unprotected under

the Pickering balancing test. A timely Petition for Rehearing with suggestion of Rehearing In Banc was denied on September 21, 1988. (Appendix C, App. 35, infra.)

The jurisdiction of this Court to review the judgment of the Seventh Circuit is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED HEREIN

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 42, §1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

Petitioner William Berg ("Berg") was employed as Intramural/Recreation Coordinator by the respondent Board of Trustees of Illinois Community College District No. 532 (the "Board") at the College of Lake County ("CLC") on a series of one-year contracts from January 23, 1978, until the elimination of his position, effective April 1, 1984, and the termination of his employment, effective June 30, 1984. Commencing with the 1979-80 academic year, Berg's position was included within the Division

of Health, Physical Education, Recreation, Intramurals, and Athletics ("HPERIA"). During the relevant period of time, Berg's immediate supervisor was the respondent Lawrence Matthews, ("Matthews"), Associate Dean of HPERIA; Matthews' superior was the respondent James Doppke ("Doppke"), Vice President of Academic Affairs; and the respondent John Hunter ("Hunter") was President of CLC.

On October 31, 1983, Berg filed the following written grievance under Board Policy 927, "Framework for Addressing Concerns," against Hunter:

> WRITTEN DESCRIPTION OF CONCERN WITH SUBSTANTIVE DETAIL:
>
> The following is a list of grievances that I wish to have addressed using the College of Lake County Board Policy 927. These

grievances include violations to College of Lake County Board Policy, Federal Constitutional Rights and Civil Law. My grievance is that the actions and decisions of Dr. Hunter regarding the violations listed below are investigated in terms of "management malpractice," particularly his financial defrauding of Lake County residents while performing duties as president of the College of Lake County.

I look forward to discussing each violation with the accused, Dr. John O. Hunter, the four member panel, and my appointed ombudsman.

Violation of College of Lake County Board Policy 936

Violation of College of Lake County Board Policy 927

Violation of College of Lake County Board Policy 933

Violation of College of Lake County Board Policy 912

Violation of College of Lake County Board Policy 928

Violation of College of Lake County Board Policy 929

Violation of College of Lake County Board Policy 421

Violation of College of Lake County Board Policy 204

Violation of College of Lake County Board Policy 229

Violation of College of Lake County Board Policy 231

Violation of Federal Law Constitutional Rights-First Amendment

Violation of Federal Law Title 41, Chapter 60

Violation of Federal and State

Laws for Employee Rights for a Safe Working Environment[1]

At the time Berg submitted his October 31, 1983, grievance and until Berg's deposition was taken after the filing of this case, neither the Board nor the administration had any knowledge

[1] The policies related to the matters designated: 936 salary increases; 927 - the CLC framework for addressing grievances and "concerns"; 933 - defines and prohibits "sexual harassment"; 912 - refers to the "Nonscheduled Use of College Faculties, Equipment and Materials by Employees"; 928 - defines "Contract Employees"; 929 - states CLC policy with respect to "Equal Employment Opportunity and Affirmative Action"; 421 - relates to tuition and fee refunds to eligible students upon withdrawal from CLC or course cancellations; 204 - refers administrative and professional personnel to their respective "Charters of Responsibility" and job descriptions; 229 - mandates periodic evaluations for administrative staff according to CLC procedures; and 231 - prohibits CLC staff members from soliciting business from students for tutoring.

of the factual basis for any of Berg's charges, except with respect to the alleged violation of Policy 936 for which Berg provided documentary evidence in his second letter (dated February 20, 1984, discussed infra) to the Board, because neither Hunter nor the Board granted Berg's requests for a hearing with respect to this grievance.

On January 18, 1984, after exhausting the grievance procedures wherein Hunter refused to meet with Berg despite requests from Berg's ombudsmen, Berg wrote a letter to each member of the Board, attaching the written description of the aforesaid grievance and requesting "on behalf of all taxpayers" to meet with the Board to "formally review the management malpractice and fraudulent actions of its employee, John O. Hunter, with appropriate action; or choose to do nothing, and violate your

responsibility as an elected public official" (Appendix D, App. 37). Berg's letter did not charge anyone but Hunter with violations of policy or law, nor did the attached written description of the grievance mention Matthews or any other individual.

This was the second grievance Berg presented to the Board despite Hunter's express admonitions that he be the only direct line of communication with the Board. The first grievance had been against his immediate supervisor, Matthews, and arose out of a concern filed on May 18, 1983, regarding "assault with intent to provoke a physical altercation on the part of his supervisor". In his grievance against Matthews, Berg refers not only to himself but to other CLC faculty members involved in other incidents with Matthews. In attempting to provide both background

and context to the incident, Berg detailed his discussions, correspondence, and observations with respect to Matthews prior to the assault relating to, inter alia, unauthorized purchase of equipment from student fees and the conversion and/or misuse thereof by faculty, the failure to refund excess student course fees, action by Matthews which "resulted in the loss of hundreds of thousands of dollars to the college annually", sexual harassment by Matthews of female staff members, alleged violations of the laws relating to equal employment and affirmative action, and general concerns relating to Matthews' incompetence and inefficiency as an administrator and his failure to discharge his administrative responsibilities, some of which were also expressed by Matthews' supervisors in their evaluations of Matthews.

The administrative resolution of Berg's grievance against Matthews resulted in a finding by Hunter that he did "not find from the evidence that Dr. Matthews actually assaulted Mr. Berg, but it is clear that there was a regrettable loss of controlled response to Mr. Berg on Dr. Matthew's [sic] part", and a written apology to Berg by Matthews. Berg appealed the administrative determination to the Board on October 19, 1983; the Board denied his grievance on November 15, 1983. The Court is advised that although the underlying facts relating to Matthews constituted the basis for several of Berg's charges against Hunter for allegedly not enforcing certain Board policies, Berg has <u>never</u> asserted that his grievance against Matthews constituted the basis for the nonrenewal of his probationary employment, or any other retaliation.

On January 23, 1984, after receipt of Berg's January 18, 1984 letter, Hunter, Matthews and Ms. Christine Sobek ("Sobek"), the Personnel Director and Administrative Assistant to the President, met with respect to Berg. Sobek's January 23, 1984, handwritten notes state, inter alia: "Meeting on Bill Berg", "March 1st--decide retrench, dismiss," and "grievance". In addition on January 23, 1984, at 3:00 p.m., Hunter met with the attorney for the Board.

On January 24, 1984, the minutes of the "Executive Session of the Special Meeting of the Board" reflect a two-hour-and-ten-minute meeting only with respect to Berg, attended by all members of the Board and Hunter, Doppke, Sobek, and several other administrators, and the following action:

> Meeting to consider information regarding appointment, employment

or dismissal of employee or officer and probable litigation.

Dr. Hunter informed Board members of the discussion with Mr. Lifton, attorney, regarding the grievance under consideration. He indicated that Lifton wanted to make sure that the grievant's rights would not be violated.

Board members discussed the action which should be taken in answer to the grievant's letter which was sent to all Board members. After considerable discussion, the Board directed Dr. Hunter to respond to Mr. Berg's letter. The Board agreed to take action on this matter in open session.

On January 25, 1984, Hunter sent Berg a letter, on behalf of the Board, requesting specific description of alleged policy violations. Also on this date,

Sobek wrote notes on "Bill Berg matter", which include "need better documentation on our side (comprehensive summary) written record asap". Sobek's notes also state, "check his file--1982"--"documenting that we made every effort to help him", "911--Policy work (?problem)", ("Absenteeism!) No", check "my conversations", and "documentation of retrenchment".

On February 20, 1984, Berg responded to each member of the Board with a registered letter (Appendix E, App. 41) and 12 pages of documentation which focused on only one of the charges, i.e., misrepresentation by Hunter to the public via the local newspapers with respect to increases in administrative salaries. Again, Berg's letter and attached exhibits did not mention anyone other than Hunter with respect to the misconduct and malfeasance

alleged therein.

On February 27, 1984, Matthews personally delivered to Hunter's secretary a "Performance Report" he had prepared from a secret log he kept only on Berg. Matthews did not share the "Performance Report" with Berg. This type of "Performance Report" had never been made with respect to any other employee at CLC and did not conform to or comply with the evaluation procedures or practices of the Board and CLC. The "Performance Report" was also contrary to and in direct conflict with Matthews' written evaluations of Berg made throughout Berg's employment, which were all "satisfactory" or "highly satisfactory". In addition, although on January 4, 1984, Berg was scheduled for evaluation to be completed prior to March 15, 1984, on February 27, 1984, that evaluation was canceled by Hunter,

Doppke, Sobek, and the other vice presidents of CLC.

At the February 27, 1984, meeting of Hunter and the vice-presidents, the following discussion is recorded in the minutes (emphasis added):

> With regard to staffing allocation for the HPERIA Division, it is anticipated the position of Coordinator of Intramurals and Recreation will be phased out due to resource allocation concerns. <u>The deletion should be handled in an entirely separate process from any performance questions or evaluations</u>. It was determined it is not necessary to complete the formal professional staff evaluation process this year. Ideas were discussed for the best new structure for the HPERIA Division..... There was no final

conclusion to this discussion.

On February 29, 1984, Berg received the following letter from Hunter, authorized by the Board:

> This is to inform you that the Board of Trustees has received and reviewed your letter of February 20, 1984, concerning alleged violations referencing College Policy 933, which covers prohibition of sexual harassment (sic).
>
> The Board has directed me to reply as follows:
>
> 1. There is no substance to your charges concerning the execution of individual salary increases for 1982-83. The 1982-83 administrative staff salary schedule and all individual increases were specifically approved by Board action in June 1982 and executed pursuant to this authority.
>
> 2. The evaluation of college employees whom you do not directly supervise is not your responsibility; therefore, you are hereby directed not to devote college time or resources to such matters.
>
> 3. Your statement of concerns submitted under college policy, "Framework for Addressing Concerns", is hereby dismissed.

Despite his requests, Berg was

never given an opportunity to appear before the Board with respect to his grievance against Hunter.

On March 20, 1984, prior to any Board authorization or resolution, there was another meeting among Hunter and the vice-presidents, the minutes of which contain the following:

> MARCH BOARD AGENDA -
>
> HPERIA Division - Dr. Doppke has scheduled a meeting with Bill Berg for Wednesday, March 21, 1984, to cover the following points:
>
> 1. The college intends to implement the reorganization of the HPERIA Division effective April 1, 1984. As of that date, there will be no further role for Mr. Berg as Intramurals/Athletics Coordinator.
> 2. From the time period of April 1 through the expiration of

Mr. Berg's current contract on June 30, 1984, Mr. Berg will be assigned to complete some specific tasks. A suggested task is to compile an updated report on facilities usage in the P.E. area, with specific recommendations on the development of the weight room. A second suggested task is to prepare a comprehensive review of the intramurals/recreation programs as they have evolved at the college. Mr. Berg is to understand he has the option of working on these tasks out of his home.

3. Mr. Berg is entitled to use health leave as needed from April 1 through June 30. In addition, it is the college's

expectation Mr. Berg's unused vacation days will be scheduled for use during this next three month period.

4. Dr. Doppke is to communicate our appreciation of the fact Bill may need time off to investigate other employment opportunities.
5. With regard to release of information for Mr. Berg's future employment opportunities, the college will simply state it conducted a reorganization which resulted in the elimination of the intramurals/athletics coordinator position.

On March 21, 1984, Berg was informed that the HPERIA Division was going to be moved to Student Services, that his position was "eliminated--effective with Board approval", and that he would

"have a different assignment as of Board approval until June 30th, 1984".

On March 27, 1984, at the "Executive Session" of the Board, the minutes reflect the following, inter alia:

After considerable discussion, the consensus of the Board was to:

. . . .

2. Approve the 1984 Administrative Reorganization which results in the placing of the HPERIA Division within the Student Services area; the elimination of the position of Coordinator - Intramural/Recreation; and the appointment of Donna Palmieri to the position of Director of Business Services, eliminating the position

of Dir. of Purchasing and replacing it with Purchasing Agent.

The aforesaid action was based upon the drafts submitted by Matthews and Webster (then Vice-President of Student Services) pursuant to the directive given at the February 27, 1987, Hunter/Vice-Presidents meeting, which provided for placing the HPERIA Division under Students Services but did not mention either the elimination of Berg's position or the termination of his employment. Doppke modified the drafts, adding the recommendation for elimination of Berg's position "effective immediately".

Although the proposal did not provide for the termination of Berg's employment and although no supporting documents of any kind or nature were submitted to or considered by the Board in deciding

whether to reorganize the HPERIA Division and/or terminate Berg's employment (no one present at the closed or public sessions remembered any particular discussion with respect to the proposals, except Board member Rostron, who recalled a discussion as to whether the reorganization could result in litigation by Berg), the following actions were taken at the March 27, 1984, public session of the Board meeting:

> It was moved by Anderson, seconded by Block, that the Division of Health, Physical Education, Recreation, Intramurals, and Athletics be restructured administratively within the Student Services area, effective April 1, 1984; and that Ms. Donna Palmieri be appointed to the position of Director of Business Services, eliminating the position of Director

of Purchasing and replacing it with Purchasing Agent, effective July 1, 1984.

It was moved by Anderson, seconded by Block, that due to the reorganization plan for the Health, Physical Education, Intramurals, Recreation and Athletics Division, and the accompanying elimination of the position of Intramurals/Athletics Coordinator, Mr. William Berg, professional staff member is recommended for non-appointment for 1984-85.

The only full-time professional employee affected by the reorganization of the HPERIA Division was Berg. Berg's responsibilities were initially assigned to Matthews, but a substantial portion were performed by another employee, Frank Minnerly, who had less seniority than and had worked for and been

supervised by Berg. On April 23, 1985, Minnerly was officially assigned Berg's responsibilities.

The "reorganization" of HPERIA, the removal of Berg from his position, and termination of his employment were effected irrespective of the facts that the HPERIA Division was not scheduled for evaluation until the 1986-87 academic year pursuant to the five-year evaluation schedule, and neither the evaluation nor the reorganization of HPERIA was a goal in the CLC "Institutional Goals for 1983-84" adopted by the Board.

Moreover, Berg's position was eliminated and he was removed from his position three months prior to the end of the 1983-84 academic year, and his employment was terminated irrespective of the following:

1. Berg's Employment Contract for the 1983-84 academic year expressly

employed him as "full-time Intramurals/Athletic Coordinator" until June 30, 1984.

2. Board Policy 940, adopted January 25, 1983, provided in pertinent part: "Internal recruitment and promotion shall be implemented through the established college internal recruitment and promotion procedures".

3. On December 14, 1982, the CLC Personnel Procedures, Internal Recruitment and Promotion Procedures, stated:

> In the case of department/division restructuring, internal recruitment and promotion opportunities would be extended to those personnel currently employed within the department/division under reorganization prior to conducting any other internal or regular recruitment. All other established personnel procedures [were] to be followed.

The personnel procedures for the implementation of said policy stated that "opportunities shall be extended to those personnel currently employed

within the department/division under reorganization prior to conducting any other internal or regular recruitment".

Significantly, neither Hunter nor any respondent or witness ever asserted in their affidavits or deposition testimony (nor was there any documentary evidence presented to the Board or the courts) that Berg's speech had any adverse effect on working relationships, impaired discipline, or otherwise impacted upon the administration and operation of the college. Nevertheless, Hunter told the Board that no job opportunities would be extended to Berg and refused his request for a recommendation to other prospective employers.

Moreover, it was admitted that Berg was in fact never considered for any other position, including for those duties performed by and assigned to his former subordinate, Minnerly, for

Matthews' position, for which he applied after Matthews "resigned" after being demoted to teaching, or for the teaching of physical education, which Berg did on a part-time basis at CLC when he was Intramurals/Recreation Coordinator.

In addition, when Berg applied for Matthews' position after the resignation of Matthews' successor, a Mr. Whittier, he was summarily rejected without an interview. Whittier was succeeded for three weeks by a Mr. McCarthy and then by Berg's former subordinate, Mr. Minnerly.

On March 15, 1985, Berg filed a two-count Complaint against Hunter, the Board, and the trustees, individually and in their official capacities, alleging violation of Berg's rights under the First, Fifth, and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. §1983. On April 10, 1986,

Berg filed a First Amended Complaint adding as defendants Doppke and Matthews and incorporating allegations of retaliatory discharge and breach of contract into Count II. Finally, on June 1, 1986, Berg filed a ten-count Second Amended Complaint alleging: in Counts I through IV violation of his rights under the First and Fourteenth Amendments to the Constitution of the United States and under 42 U.S.C. § 1983 by the Board, Hunter, Doppke, and Matthews; in Count V conspiracy by Hunter, Doppke, and Matthews pursuant to 42 U.S.C. § 1983 and 1985(3); in Count VI violation of his right to due process and equal protection; and in Counts VII through X pendent state claims for retaliatory discharge, malicious interference with contractural relations and breach of contract.

On March 18, 1987, the district

court granted the respondents' Motion for Summary Judgment over Berg's objections (which contained a counter-affidavit and extensive documents supporting the facts alleged herein) as to Counts I through VI of the plaintiff's Second Amended Complaint, dismissing said counts with prejudice, and dismissed Counts VII through X, the pendent state claims, for want of subject matter jurisdiction (Appendix B, App. 26). After setting out a chronology of events which preceded the writing of Berg's two letters, the district court found that inter alia (App. 28-29):

> The speech which plaintiff asserts was protected and which he asserts was the motivating cause of his discharge consists of a series of internal communications which began on May 18, 1983, with a

grievance regarding his superior, Matthews, in which plaintiff charged Matthews with assault. This grievance culminated in a decision adverse to plaintiff rendered by the defendant Hunter in his capacity as president of the college. Thereafter, plaintiff appealed Hunter's decision and his appeal was denied on November 15, 1983.

In the meantime, he decided to sue the "judge", i.e., he filed a "concern" (which is a form of grievance) against Hunter on October 31, 1983. Following the denial of his appeal on November 15, 1983, he filed a "concern" against the ombudsman who had been assigned to investigate his "concern" against Hunter. Then on January 4, 1984, he filed another "concern" against Hunter which was followed by a

series of letters to the members of the Board of Trustees attacking Hunter. On February 29, 1984, the Board dismissed all of plaintiff's pending concerns/grievances.

On March 28, 1984 plaintiff was given 90 days notice of termination of his contract because of a reorganization which eliminated his job.

The district court further determined that (App. 29-30):

> We have reviewed carefully all of plaintiff's internal allegations which, he asserts, were entitled to first amendment protection. They are nothing but an extension of his personal clash with, animosity toward and grievance against Matthews. His allegations were not an

> effort to advise the governing authorities of the college of a matter of public concern. The focus of the allegations was not to evaluate the college's performance but to continue his personal controversy. He spoke upon matters of only personal interest.

The district court further held that Berg "was afforded the process due him" (App. 32). The Court dismissed the Section 1985(3) conspiracy claims "because no Section 1983 violation has occurred" (App. 33). Also on March 18, 1987, the court entered judgment dismissing Counts I through VI with prejudice and Counts VII through X for want of pendent subject matter jurisdiction. (App. 33).

On April 1, 1987, Berg filed a

Motion and Memorandum to Reconsider and Vacate the Memorandum Opinion and Order granting the Defendants' Motion for Summary Judgment and the Judgment. On June 15, 1987, Berg filed a Supplemental Motion to Reconsider and Vacate Judgment. On June 29, 1987, Berg filed a Plaintiff's Motion for Relief From Judgment and Order and a Memorandum in support thereof, pursuant to Rule 60(b)(1) or, in the alternative, Rule 60(b)(6) of the Federal Rules of Civil Procedure. It should be noted that in these motions, Berg advised the court inter alia, that Berg had never asserted that his grievance against Matthews was the "motivating cause of his discharge", and filed an additional affidavit relating to the court's findings, which affidavit the Court refused to consider.

On June 29, 1987, the district

court denied Berg's Supplemental Motion to Reconsider and Vacate Judgment and Berg's Motion for Relief from Judgment and Order.

On June 30, 1987, Berg timely filed his Notice of Appeal, invoking the jurisdiction of the United States Court of Appeals for the Seventh Circuit pursuant to 28 U.S.C. §§1291 and 1294.

On August 10, 1988, the Seventh Circuit issued its opinion (Appendix A, App. 1) affirming the district court's judgment on other grounds, viz., that although Berg's speech involved issues of public concern, it was constitutionally unprotected under the Pickering balancing test (App. 19), which it applied sua sponte for the first time on appeal.

It is noted that because the district court concluded that Berg's speech did not involve issues of public concern, it did not apply the Pickering test.

Moreover, the respondent Board did not make this argument in its Memorandum in Support of Motion for Summary Judgment submitted to the district court, raising it only in a conclusory, belated manner and without reference to supporting evidence in its Reply Memorandum. In addition, the respondent again without citation to any facts contained in the record, made the same conclusory, unsubstantiated argument in the Brief of Defendants-Appellees, which was responded to in the Reply Brief of Appellant to the extent permitted by the record on appeal.

Consequently, the Petitioner did not have a fair and adequate opportunity to present a factual response (based upon the depositions and exhibits not presently of record) with respect to what was previously not an issue in the case, and upon which the Circuit

Court based its decision. Simply stated, there was and is no evidence in the record on appeal which sustains the "factual findings" of the Seventh Circuit upon which it based its opinion. (See Argument, infra).

On September 21, 1988, the Seventh Circuit denied petitioner's Petition for Rehearing, with Suggestion of Rehearing In Banc, wherein petitioner requested, intra alia, an opportunity to fully brief and argue the facts relative to the issue upon which the Appellate Court based its opinion.

REASONS FOR GRANTING THE WRIT

I

THE CIRCUIT COURT MISAPPLIED THE DECISIONS IN PICKERING, CONNICK, AND RANKIN WHEN IT DECIDED THAT SPEECH BY A PUBLIC EMPLOYEE ACCUSING THE COLLEGE PRESIDENT OF PUBLICLY MISREPRESENTING EMPLOYEE SALARIES DURING A PERIOD OF BUDGET DEFICITS WHILE ACTUALLY INCREASING SALARIES AT AN INFLATED RATE IN ORDER TO GOVERN PATRONAGE SUPPORT AT THE COLLEGE WAS UNPROTECTED SPEECH, WITHOUT EVIDENCE OF RECORD ESTABLISHING ACTUAL INTERFERENCE WITH THE EFFECTIVE FUNCTIONING OF THE COLLEGE, AND THE DECISION IS IN CONFLICT WITH DECISIONS OF THE OTHER CIRCUIT COURTS.

In Rankin v. McPherson, _____ U.S._____, 107 S.Ct. 2891 (1987), this Court continued to define the parameters of the ad hoc particularized balancing test first established in Pickering v. Board of Education, 391 U.S. 563 (1968) and limited in Connick v. Myers, 461 U.S. 138(1983).

The threshold question continues to be whether the speech may be "fairly characterized as constituting speech on a matter of public concern." Rankin,

107 S.Ct. at 2897, citing Connick, 461 U.S. at 146, and iterating that, "whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record. Id., at 147-148, 103 S.Ct., at 1690." Id. As in the instant case, the District Court in Rankin determined that McPherson's speech did not address a matter of public concern. Rankin, id. The Fifth Circuit rejected this conclusion, and this Court affirmed stating:

> The inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern. "[D]ebate on public issues should be uninhibited, robust, and wide-open, and ... may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." New York Times Co. v. Sullivan, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed2d 686 (1964); see also Bond v. Floyd, 385 U.S. 116, 136, 87 S.Ct. 339, 349, 17 L.Ed.2d 235 (1966); "Just as erroneous statements must be

> protected to give freedom of expression the breathing space it needs to survive, so statements criticizing public policy and the implementation of it must be similarly protected".

The Seventh Circuit herein, in accordance with the aforesaid precedent, found as follows with respect to the accusation Berg particularized in his February 20, 1984 letter to the Board (App. 18):

> Even though Berg never made a claim regarding his own salary, he specifically accused Hunter of publicly misrepresenting staff and teacher salary increases during a period of budget deficits while actually increasing salaries at an inflated rate in order to garner patronage support at the college. Unwarranted salary increases at a public college during a period of budgetary constraints, coupled with public misrepresentations regarding the size of those increases, clearly involves matters of public concern. In an age of every dwindling public resources, mounting deficits, and demand for greater accountability by public officials, charges of inequitable allocation or misuse of public funds implicates matters of substantial public importance.

See Knapp v. Whitaker, 757 F.2d. 827, 840 (7th Cir.), cert. denied, 474 U.S. 803 (1985).

The Seventh Circuit then proceeded sua sponte to conduct the balancing test in a rather obvious attempt to squeeze within the facts and application of the law conducted by this Court in Connick. However, unlike the trial record in Connick, and the record before the Appellate Court in Rankin after remand for resolution of what it deemed substantial issues of disputed facts relating to the "context" within which McPherson made her statement, McPherson v. Rankin, 736 F.2d 175, 180 (5th Cir. (1984), there is no evidence in the record (because the parties had not briefed the issue since it was not raised before or addressed by the District Court) which sustains the factual findings of the Seventh Circuit in this case.

More particularly, there is no

evidence whatsoever that "Berg's speech had a decidedly adverse impact on the efficient administration of public education at CLC" (App. 201). Berg respectfully requests the Court to reexamine the record in an effort to find any deposition testimony or documentation in support of this factual conclusion (and the others hereinafter set forth).

Contrary to the findings of the Court that Berg "engaged in a series of antagonistic and threatening communications" and the Court's reference to the "volume and detail of his correspondence" (App. 21), there was in fact only one grievance against Hunter which was iterated and reiterated verbatim with each succeeding ombudsman pursuant to college practice, just as there was only one occasion that Berg expressed his specific concerns (pursuant to the

Board request) over allegedly inflated salary increases, i.e., in his letter only to the Board of Trustees of February 20, 1980 (App. 41). Moreover, the Court's reference to "an unusually poor performance report evaluating Berg's work during 1984" was unwarranted because Berg's evaluation for the 1983-84 academic year was undisputedly cancelled, and the clandestine "performance report" (prepared by Matthews subsequent to being reprimanded by President Hunter for his inappropriate behavior toward Berg) was unauthorized, not in conformity with College policy, not accepted by the administration or known to the Board, and contrary to all Berg's official evaluations, which were satisfactory or better.

The only adverse impact at CLC as a result of Berg's speech was the removal of Berg from his position and the termination of his employment!

Similarly, there is no evidence to support the following factual conclusions (App. 22-23):

> Moreover, Berg's speech was a clear assault on Hunter's authority, see Pickering, 391 U.S. at 570, with whom he had close and frequent contact. Id. at 569-70. Such conduct could serve only to undermine Hunter's ability to maintain discipline and harmony among CLC's workforce, id. which, according to Berg's charges, was riddled with overpaid cronies functioning in Hunter's patronage system. Like Myers's questionaire in Connick, Berg's conduct can be described fairly as a "mini-insurrection."

First, there is no evidence whatsoever that Hunter's authority was in any way undermined or impaired by Berg's charges (as manifested by the Board's adopting his recommendations on the "reorganization" and continuing his employment as President). Moreover, the statement that Berg had close and frequest contact with Hunter is simply not true! In fact, Berg had three administrative levels between him and Hunter in the hierarchy,

and had "no confidential, policymaking, or public contact-role" at the college. Rankin, 107 S.Ct. at 2900. Moreover, the record reveals only two occasions when Berg and Hunter met personally in the entire seven years of Berg's employment, which were to discuss Berg's concern against Matthews, and that Berg's requests to meet with Hunter and the Board with respect to Berg's grievance against Hunter were ignored.

Nor is there any evidentiary support for the assumption that Berg's conduct undermined Hunter's ability to maintain discipline and harmony among CLC's workforce or for the use of the terminology "riddled with overpaid cronies", although Berg did allege that Hunter developed a patronage system which overpaid its employees.

In addition, as distinguished from

the facts established of record at the trial in Connick, there is no testimony or exhibits establishing that Berg's actions were "causing a mini-insurrection" in the language of Connick or constituted "an act of insubordination which interferred with working relationships." To the contrary, the evidence of record establishes that Berg did not discuss the specifics with his ombudsmen, who agreed that Berg and Hunter should informally discuss this matter. Connick, 461 U.S. at 151. Compare Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 509 (1969), wherein this Court found:

> [I]n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.
>
> .....
>
> In order for the state ...to justify prohibition of a particular expression of opinion, it must be able to show

> that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. Burnside v. Lyars, 363 F.2d 744, 749 (CAS 1966).

Accord McGill v. Board of Education of Pekin Elementary School, 602 F.2d 774, 777 (7th Cir. 1979); wherein the court stated that "Real, not imagined[,] disruption" is required to justify action against an employee; McKinley v. City of Eloy, 705 F.2d 1110, 1114, 1115 (9th Cir. 1983); and Brasslett v. Coda, 761 F.2d 827, 845 (1st Dist. 1985).

Although in Connick, 461 U.S. at 152, this Court did "not see the necessity for an employer to allow events to unfold to the extent that the disruption of the office and the destruction of working

relationships is manifest before taking action", this Court further stated: "We caution that a stronger showing may be necessary if the employee's speech more substantially involved matters of public concern", which is, (to make the obvious explicit), the very reason the Seventh Circuit went to such inexorable lengths to classify Berg's speech as a "single" (and therefore "in only a most limited sense" id. at 154) touching on a matter of public concern, ignoring the substance of his charges relating to public misrepresentation, and (the only other) documented facts in its own opinion acknowledging that Berg addressed issues relating to "sexual harassment, the misappropriation of college property, and the allocation of specific duties within the college may relate to CLC's efficient performance" (App. 12) and the other charges contained in Berg's

concern (see text herein, pp. 7-10 infra) and letters to the Board (App. 37-41).

The Seventh Circuit should have recognized Berg's speech as "core" speech, clearly concerning matters of public impact, under established precedent. See Johnson v. Lincoln University, 776 F.2d 443, 452 (3rd Cir. 1985), and Conway v. Smith, 853 F.2d 789, 796, (10th Cir. 1988) and cases cited therein, including Knapp v. Whittaker, 757 F.2d 827, 840 (7th Cir.), cert. denied, 474 U.S. 803 (1985), which would require evidentiary showing that Berg's speech actually or substantially interferred with college operations. Rankin, 107 S.Ct. at 2899; and American Postal Workers v. U.S. Postal Service, 830 F.2d 294, 303 (D.C. Cir. 1987), and cases cited therein.

Moreover, it is significant that in Connick the trial evidence established a factual basis upon which this Court

properly found that Connick (as he testified) was not constitutionally required to "tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationship". Connick, 461 U.S. at 152, 154. Significant factors were the manner (requiring not only Myers to leave her work but others to do the same in order to complete the questionnaire), time (during the work day), and place (at the office) in which the questionnaire was distributed, as well as the context (arising out of a persistent dispute between Myers and Connick and his deputies over office transfer policy), Connick, 461 U.S. at 137-139, all of which are distinguishable from the instant case, wherein the Court of Appeals assumed, a fortiori, without a sufficient evidentiary basis, that Berg's speech must have had an adverse

effect under the Pickering/Connick/Rankin calculus. "This cryptic conclusion seems to ignore the ancient wisdom that calling a thing by a name does not make it so." City of Madison Joint School District No. 8 v. Wisconsin Employment Relations Commission, 429 U.S. 167, 174 (1976)). It is respectfully submitted that every First Amendment expression (particularly if true and effective) jeopardizes its maker under such an analysis.

Lastly, the record does not support the following findings (Slip Opinion, p. 11):

> The "increasing hostility and deteriorating relationship" between Berg and his supervisors further exacerbates the disruptive impact of his speech. Berg's contentious and embittered accusations demonstrate a heightened level of personal animus toward Hunter and the entire CLC administration that could only create an "atmosphere detrimental to workplace harmony and cooperation." Hesse, No. 87-1502, Slip Opinion at 9-10.

The Appellate Court's statements

are particularly enigmatic in light of the persistent refusal by the Board of Trustees to characterize Berg's dismissal as being in any way or nature for cause and the fact that its witnesses carefully and meticulously avoided any accusations of poor work performance and/or relationships, insisting that the "one-man" college reorganization was based solely on "mission realignment and program cost-effectiveness". There is no evidence that Berg had any problems working with anyone other than Matthews, whose official evaluations found Berg to be a satisfactory or better employee and whom Berg continued to work for until his removal on April 1, 1984. Moreover, the record reveals that it was Matthews and not Berg who was the cause of the work relationship problems, not only with Berg but with other faculty, as evidenced by Matthews' evaluations, demotion to faculty status,

and dismissal.

The present record is completely distinguishable from that of Connick and is more analogous to the facts (established at a hearing) of Pickering, 391 U.S. at 569, 570, 572-573 and Rankin supra.

This Court in Connick applied the balancing test upon an evidentiary record after trial (and after the parties had been allowed the opportunity to properly brief the issue). Significantly, Myers was dismissed for refusing to accept her transfer and because "her distribution of the questionnaire was considered an act of insubordination." Connick, 461 U.S. at 141. Determinatively, this Court further stated (Id. at 148):

> Myers did not seek to inform the public that the District Attorney's Office was not discharging its governmental responsibilities in the investigation and prosecution of criminal cases. Nor did Myers

seek to bring to light actual or potential wrongdoing or breach of public trust on the part of Connick and others.

However, "the Seventh Circuit's" blatant and procrustian attempt to cram this case into the established facts and language of Connick simply does and should not survive close scrutiny. The Seventh Circuit, which justifiably prides itself upon strict adherence to law, should not have contenanced such a conclusion.

For these reasons, this petition for a writ of certiorari should be granted, the opinion of the Seventh Circuit be reversed, and the case remanded for further proceedings.

II

THE GRANTING OF SUMMARY JUDGMENT IN FAVOR OF A PUBLIC EMPLOYER UNDER THE PICKERING, CONNICK, AND RANKIN BALANCING TEST WHEN THERE WERE GENUINE ISSUES OF MATERIAL FACT AS TO WHETHER SPEECH INVOLVING CLEAR PUBLIC CONCERN INTERFERRED WITH THE EFFECTIVE FUNCTIONING OF THE EMPLOYER WAS IN DIRECT CONFLICT WITH THE COURT'S DECISIONS IN CELOTEX CORPORATION v. CATRETT AND ANDERSON V. LIBERTY LOBBY, INC., AND IN CONFLICT WITH THE DECISIONS OF THE CIRCUIT COURTS.

Berg further respectfully submits that the Seventh Circuit's affirmance of the district court's granting of summary judgment on other grounds without supporting facts of record to sustain the judgment as a matter of law and where genuine issues of material fact (as determined by the aforesaid substantive law) existed requires reversal and remand under Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Celotex Corporation v. Catrett, 477 U.S. 317 (1986). Under Rule 56(c) of the Federal Rules of Civil Procedure, since Berg

has been found to have engaged in speech related to matters of public concern, the burden shifted to the Board of Trustees to establish, based upon an adequate record [WSB-TV v. Lee, 842 F.2d 1266, 1269 (11th Cir.1988)], as to which there was no genuine issue of material fact, that it was entitled to judgment as a matter of law. cf. Jones v. Dodson, 727 F.2d 1329, 1334 (4th Cir.1984) and Tygrett v. Washington, 543 F.2d 840, 849 (D.C.Cir. 1974).

When the evidence or facts of record have been insufficient in analgous cases, the circuit courts, including the Seventh Circuit, have, except for the instant case and Rode v. Dellarciprete, 845 F.2d 1195, 1202-1203, 1209 (3rd Cir. 1988), wherein the parties had fully briefed the issue before the circuit court, reversed summary judgments and remanded to the district court. See Kurtz v.

Vickney, 855 F.2d 723, 726-732 (11th Cir. 1988); Belk v. Town of Minocua, 858 F.2d 1256, (7th Cir. 1988); Patterson v. Johnson, 721 F.2d. 228, 232 (8th Cir. 1983); McBee v. Jim Hogg County, Texas, 730 F.2d 1009, 1017 (5th Cir. 1984, En Banc); Jackson v. Bair, 851 F.2d 714, 721 (4th Cir. 1988); and Zamboni v. Stamler, 847 F.2d 73, 83 (3rd Cir. 1988).

Under the aforesaid precedent, the Board of Trustees should have been required to have had undisputed proof in the record on appeal that Berg's employment was terminated for speech which, based upon substantial evidence of record, disrupted the administration of the College, undermined Hunter's authority, and/or destroyed close working relationships. Since Berg's employment was not terminated for those reasons, since the Board of Trustees has never asserted that his performance and working relationships

were the reason for his dismissal, since Hunter and the other respondents never asserted any adverse impact or effect as a result of Berg's speech, since Hunter, and since the evidence of record is insufficient to sustain the Board of Trustees' burden of proof under the Pickering/Connick/Rankin calculus (or at the least contains genuine issues of material fact with respect thereto), the Court of Appeals should have reversed and remanded the case for application of the Pickering/Connick/Rankin balancing test or, in the alternative, to have allowed the parties to supplement the record and/or fully brief and argue the facts relating to the issue upon which the Court based its opinion.

For these reasons, this petition for certorari should be granted, the opinion of the Seventh Circuit be reversed, and the case remanded for further proceedings.

III

THE COURT SHOULD EXERCISE ITS SUPERVISORY POWER WHEN A CIRCUIT COURT SEARCHES THE RECORD IN AN ATTEMPT TO FIND A FACTUAL BASIS TO DEFEAT A FIRST AMENDMENT CLAIM AND SUA SPONTE APPLIES THE PICKERING, CONNICK AND RANKIN BALANCING TEST FOR THE FIRST TIME ON APPEAL ABSENT AN ADEQUATE EVIDENTIARY RECORD AND WITHOUT AFFORDING THE PARTIES THE OPPORTUNITY TO SUPPLEMENT THE RECORD AND/OR BRIEF THE ISSUES UPON WHICH THE COURT BASED ITS OPINION.

Lastly, for the reasons expressed previously, and by reason of this Court's repeated holding that, in First Amendment issues, "an appellate court has the obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression,'" Bose Corporation v. Consumers Union Of United States, Inc., 466 U.S. 485, 499 (1984), quoting New York Times Co. v. Sullivan, 376 U.S. 254, 284-286 (1964). Rankin, 107 S.Ct. at 2891, N.9, we are respectfully

requesting the Court to exercise its supervisory power, and to reverse and remand the judgment.

For these reasons, this petition for a writ of certiorari should be granted, the opinion of the Seventh Circuit be reversed, and the case remanded for further proceedings.

CONCLUSION

For these reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 87-2050

WILLIAM BERG,

Plaintiff-Appellant,

v.

DR. JOHN HUNTER, individually and as President of the College of Lake County, Illinois; JAMES DOPPKE, individually and as Vice President of Academic Affairs of the College of Lake County, Illinois; LAWRENCE MATTHEWS, individually and as Associate Dean and Chairman of Health, Physical Education, Recreation, Intramurals, and Athletics of the College of Lake County, Illinois; BOARD OF TRUSTEES OF ILLINOIS COMMUNITY COLLEGE DISTRICT NO. 532; and ELEANOR ROSTRON, RICHARD A. ANDERSON, NANCY BLOCK, MILLICENT BERLIANT, JAMES LUMBER, RICHARD BRYAN, and NAN FAIRHURST, individually and jointly as Members of the Board of Trustees of Illinois Community College District No. 532,

Defendants-Appellees.

Appeal from the United
States District Court for the
Northern District of Illinois,
Eastern Division
No. 85 C 3355 -
Prentice H. Marshall, Judge

ARGUED FEBRUARY 24, 1988-
DECIDED AUGUST 10, 1988

BEFORE BAUER, Chief Judge, MANION and KANNE, Circuit Judges

BAUER, Chief Judge. William Berg appeals the district court's grant of summary judgment to the defendants on his First and Fourteenth Amendment claims. We affirm.

I.

Berg served as the intramural athletic coordinator for the Community College of Lake County, Illinois (CLC) in its department of Health, Physical Education, Recreation, Intramurals, and Athletics (HPERIA), from January, 1978, until his dismissal in June, 1984. The defendants maintain that Berg's termination was

incidental to a legitimate reorganization of HPERIA. Berg, the only casualty of the reorganization, charges that contrary to his First Amendment right to free speech, his termination was in retaliation for speaking out against the alleged misconduct of CLC's president, Dr. John Hunter. The district court declined to scrutinize the reasons behind Berg's dismissal, concluding that his accusations against Hunter were merely an extension of a personal grievance, not entitled to first amendment protection.[1]

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[1] The defendants maintain that Berg's termination was an incidental result of the reorganization and unrelated to his charges against Hunter. Because the district court found that Berg's speech was unprotected, it never reached the issue of causation. Before a plaintiff may recover she must show that the protected speech was a substantial or motivating factor in the adverse job action. Mt. Healthy Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977); see also Givhan v. Western Line Consol. School Dist., 439 U.S. 410 (1979).

Berg's tale begins with a clash involving Dr. Lawrence Matthews, CLC's Associate Dean and Chairman of HPERIA during Berg's employ. It seems that Berg and Matthews couldn't agree on which day of the week it was, much less deal with the complexities of scheduling intramural athletic events. Their squabbling culminated in a physical altercation on May 10, 1983, in which Berg alleged that Matthews assaulted him. Berg subsequently filed a "concern" against Matthews under CLC's formal grievance procedures.[2] Under

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[2] CLC has an internal grievance procedure call "Framework for Addressing of Concerns" (FAC), which allows an employee to seek resolution of college-related concerns. The FAC states, in pertinent part, that a concern is an "issue which is felt to adversely affect an individual or group of individuals" and that a grievance is a "perceived violation, misinterpretation, misapplication of written college procedure or policy or civil law." CLC maintains a trained pool of ombudsmen, anyone of whom may be chosen by a grievant, to assist in mediation, representing both sides equally. The FAC contains several

these procedures, Dr. Hunter ultimately disposed of Berg's claim, finding that while there was no actual assault, "there was a regrettable loss of controlled response to Mr. Berg on Dr. Matthews' [sic] part." While Berg appealed Hunter's decision to CLC's Board of Regents, he filed a grievance against Hunter alleging fraud, management malpractice, public misrepresentation, and violations of CLC policy, the United States Constitution, and civil law.[3]

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steps to resolve disputes. The final two steps are Step VI, "Presidential Review," and Step VII, "Option to appeal through President to the Board of Trustees." The Board has the right to determine whether to review the decision.

[3] Berg's grievance set out ten CLC policy violations and three civil law violations, including charges concerning: salary increases; the CLC framework for addressing concerns; sexual harassment; use of college facilities and equipment; "contract employees"; CLC's affirmative action program; CLC's tuition and fee refund policy; job responsibilities of administrative and professional personnel; administrative staff evaluation; and tutoring.

Although Berg acknowledges that many of his charges are grounded on Hunter's alleged mishandling of his personal dispute with Matthews,[4] he maintains that his accusations involve matters of public concern and, thus, are entitled to First Amendment protection. The district court viewed Berg's grievance against Hunter as nothing more than the "second round" of his personal squabble with Matthews in which Berg attacked the "judge" (Hunter) who scored the "first round" in Matthews's favor.[5]

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[4] Matthews also is a defendant to this suit. Berg, however, contends that he was named only after discovery revealed his involvement in the HPERIA reorganization and not as a result of any of their personal confrontations.

[5] On October 31, 1983, Berg filed his formal grievance with the CLC Board accusing Dr. Hunter of "management malpractice" ranging from "financial defrauding of Lake County residents" to sexual harassment. On December 8, 1983, Berg met with ombudsmen Webster and Palmieri regarding his

II.

Pickering v. Board of Regents, 391 U.S. 563 (1968), and its progeny, see

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grievance against Hunter. Berg subsequently filed a grievance against Webster for his conduct while acting as Berg's ombudsman. On January 4, 1984, Berg filed a second grievance against Hunter reiterating his earlier charges. Following the exhaustion of his grievance procedures, Berg sent a letter to each member of the Board on January 18, 1984, again reiterating his charges against Hunter and demanding a review of Hunter's "management malpractice." The Board responded by requesting specific details of the charges against Hunter. Berg's reply provided details of only one of the charges. On February 29, 1984, Hunter informed Berg by letter that the Board found no substance to his charges and formally dismissed Berg's grievance.

On February 27, 1984, at a CLC Vice President's meeting including Dr. Hunter, a proposal was submitted to reorganize HPERIA. Although no decision was made regarding the reorganization proposal, a subsequent meeting of the same group produced an agreement to reorganize the department and thereby eliminate Berg's position subject to approval by CLC's Board. On March 21, 1984, Berg was informed of the impending reorganization and elimination of his position. The Board subsequently adopted the reorganization plan and eliminated Berg's position by separate vote. Berg was the only

Perry v. Sindermann, 408 U.S. 593 (1972); Branti v. Finkel, 445 U.S. 507 (1980), signaled a new era in First Amendment law, marked by greater appreciation for an employee's right to speak out on matters of public concern. Today, a balance must be struck between "the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Pickering, 391 U.S. at 568. Where the employee's speech touches upon a matter of public concern and does not so substantially interfere with her work as to disrupt the efficient performance of the public service she renders, that

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full-time professional employee affected by the reorganization. Although he applied for other positions within CLC, Berg's contract was not renewed and he was not offered another job.

speech cannot form the basis for an adverse employment decision. Id.

A.

Recognition of an employee's free speech rights, however, does not subject every public employment decision to judicial scrutiny. See Callaway v. Hafeman, 832 F.2d 414, 416 (7th Cir. 1987) ("The Constitution simply does not guarantee public employment unsullied by the potential for silly and at times unjustified termination or transfer unless premised upon specific forbidden grounds."). Nor do allegations involving free speech necessitate application of Pickering's balancing test where an employee "speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of private interest . . ." Connick v. Myers, 461 U.S. 138, 147 (1983). Only where the asserted speech touches upon matters of political, social,

or other concern to the community must the court employ a balancing test to determine whether the speech is constitutionally protected. Connick, 461 U.S. at 146; Pickering, 391 U.S. at 572.

Clearly, much of Berg's speech involves matters only of private concern, not requiring further scrutiny of the reasons for his discharge. As noted by the district court, Berg's ongoing personal dispute with Matthews cannot be divorced from his charges against Hunter. Although Berg makes much of the fact that he neither named Matthews in any of his three complaints alleging Hunter's management malpractice, nor admitted that dissatisfaction with the disposition of his grievance against Matthews motivated his charges against Hunter, we are obligated to consider the entire record in evaluating his speech. See Connick, 461 U.S. at

147-148. That record belies Berg's contention that the two are unrelated.

It is not coincidence that Berg's grievance against Hunter followed closely behind an appeal of Hunter's disposition of the Matthews altercation. Berg himself acknowledges that the underlying facts and rationale for his grievance against Matthews form the basis for several of his charges against Hunter. The content of those charges substantiates the inter-dependence of the two. Many of the allegations relate directly to Hunter's handling of Berg's numerous personal grievances with Matthews. For example, Berg's charge that Hunter violated CLC Policy 933 against sexual harassment stems from Berg's complaint that Matthews's sexual harassment of others prevented Berg from doing his job. His claim that Hunter violated Policy 912, "Non-Scheduled Use of

College Facilities, Equipment and Materials by Employees," is based on an allegation that Hunter ignored information about Matthews's failure to investigate the misappropriation of school equipment by faculty members as identified by Berg. And Berg's charge based on CLC Policy 204, "Specific Duties and Responsibilities," arises from Berg's complaint that Matthews failed to supply him with a charter of responsibilities setting out his duties.

Although matters of sexual harassment, the misappropriation of college property, and the allocation of specific duties within the college may relate to CLC's efficient performance. Berg's charges clearly sought vindication of his many disagreements with Matthews and his personal dissatisfaction with Hunter's performance as the President of CLC. His speech does not implicate broader issues of public school administration unrelated

to his personal disputes. See Altman v. Hurst, 734 F.2d 1240, 1244 (7th Cir.), cert. denied, 469 U.S. 982 (1984). The timing and content of these charges are tied inexorably to matters of only personal interest to Berg. See Connick, 461 U.S. at 148 (Commenting on several questions raised in Myers's questionnaire, the Court notes that "while discipline and morale in the workplace are related to an agency's efficient performance of its duties, the focus of Myers's questions is not to evaluate the performance of the office but rather to gather ammunition for another round of controversy with her superiors."). That the effective operation of government and the services it renders are matters of public concern generally does not make each link in the chain of government operations constitutional fodder for disgruntled employees. If every facet of internal operations

within a government agency were of public concern, and therefore any employee complaint or comment on such matters constitutionally protected, no escape from judicial oversight of every governmental activity down to the smallest minutia would be possible. Id. at 149. Personal grievances clocked in the garb of institutional dress are not thereby made matters of public concern. See Vukadinovich v. Bartels, No. 87-2057 (7th Cir. 1988); Hesse v. Bd. of Educ., 848 F.2d 748 (7th Cir. 1988); Egger v. Phillips, 710 F.2d 292, 318 (7th Cir.) (en banc), cert. denied, 464 U.S. 918 (1983); Ferrara v. Mills, 781 F.2d 1508, 1515-16 (11th Cir. 1986). Content, form, and context all must be considered in evaluating the true nature of the speech in question.

B.

Notwithstanding these caveats and admonitions, however, Connick makes clear

that even amid the strife of personal dispute, an employee's speech may touch upon matters of public concern necessitating the use of Pickering's balancing test. See Rode v. Dellareipete, No. 87-5368 (3d Cir. April 27, 1988); see also Johnson v. Lincoln Univ. of Commonwealth, 776 F.2d 443, 451 (3d Cir. 1985) ("[T]he mere fact that an employer's statement is an outgrowth of his personal dispute does not prevent some aspect of it from touching upon matters of public concern, as Connick itself makes clear."). Although Connick undoubtedly sought to limit the court's involvement in ubiquitous employment disputes by permitting summary dismissal of a plaintiff's First Amendment claim where only private concerns are implicated, it nevertheless illustrates the application of Pickering where only a fragment of the speech at issue touches upon a matter of public concern.

In Connick, the Court found that the content of a single question out of fourteen propounded in Myers's questionnaire required application of the Pickering test because it involved an issue of public interest-where assistant district attorneys felt pressured to work in political campaigns. Thus, even though the Court found that Myers's speech was motivated by dissatisfaction with her own job transfer-hardly a matter of public concern-and all but one of her questions involved only matters of private interest, the substance of that single question required a balancing of the parties' relative interests under Pickering. See Johnson, 776 F.2d at 451; Rode, No. 87-5268, slip op. at 9-14.

Although the point or motive behind an employee's speech is relevant in determining whether matters of public concern are implicated by that speech,

motive alone is not dispositive. A fair reading of Connick simply will not support the use of such a litmus test. Despite the Court's explicit finding that Myers's questionnaire was motivated by a personal dispute, id. at 148, the content of her speech was paramount to the Court's finding that a public issue was implicated. This court also has recognized that content is the greatest single factor in the Connick inquiry. Yoggerst v. Hedges, 739 F.2d 293, 216 (7th Cir. 1984); cf. Givhan v. Western Line Consolidated Sch. Dist., 439 U.S. 410, 415 n.4 (1979). Like Myers's questionnaire in Connick, Berg's accusations are entangled in an ongoing personal dispute with his supervisors. Like Myers's single question regarding political campaigning, the content of a single charge raised by Berg also touches upon issues of public concern.

Even though Berg never made a claim regarding his own salary, he specifically accused Hunter of publicly misrepresenting staff and teacher salary increases during a period of budget deficits while actually increasing salaries at an inflated rate in order to garner patronage support at the college. Unwarranted salary increases at a public college during a period of budgetary constraints, coupled with public misrepresentations regarding the size of those increases, clearly involves matters of public concern. In an age of ever dwindling public resources, mounting deficits, and demand for greater accountability by public officials, charges of inequitable allocation or misuse of public funds implicates matters of substantial public importance. See Knapp v. Whitaker, 757 F.2d 827, 840 (7th Cir.), cert. denied, 474 U.S. 803 (1985).

Because Judge Marshall concluded that Berg's speech did not involve issues of public concern, he did not apply the Pickering test. We believe, as a matter of law, that such an analysis nevertheless renders Berg's speech constitutionally unprotected. Essentially, Pickering asks whether the state's allegedly retaliatory action is justified in light of the competing interests of the employee as a citizen and the state as an employer. Id. at 572; see also Hesse, No. 87-1522, slip op. at 9. That question requires an examination of the nature of the employee's speech and its disruptive impact on the function and operation of the governmental service at issue. Where an employee's speech hinders, or threatens to hinder, Connick, 461 U.S. at 152, the efficiency of the office or agency for which she works, her termination will not

offend the First Amendment. Id. at 151, 154; see also Arnett v. Kennedy, 416 U.S. 134, 168 (1974) (Powell, J., concurring) (Government must have the power as an employer "to remove employees whose conduct hinders efficient operation and to do so with dispatch.").

A.

The record makes clear that Berg's speech had a decidedly adverse impact on the efficient administration of public education at CLC. Berg did not express his concern over allegedly inflated salary increase on just a single occasion. Rather, he engaged in a series of antagonistic and threatening communications involving three separate CLC ombudsmen (one of whom Berg charged separately with misconduct while handling his claim against Hunter), Hunter himself, and every member of CLC's Board.

The time and energy expended by Berg in pursuit of his attack Hunter is apparent from the volume[6] and detail[7] of his

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[6] On October 31, 1983, Berg first filed a written grievance concerning salary increases shortly after Hunter had disposed of Berg's claims against Matthews. On December 8, 1983, Berg met with CLC's ombudsmen Palmieri and Webster regarding Berg's charges against Hunter. Berg subsequently filed a complaint against ombudsmen Webster on December 21, 1983, alleging his misconduct while handling the challenge to Hunter. On January 4, 1984, Berg again filed a written grievance reiterating his earlier charge against Hunter, and selected a new ombudsman, John Lumber. After repeatedly demanding a meeting with Hunter, Berg sent a letter to each member of the Board again expressing his concern over the salary increases and demanding that the Board "formally review the management malpractice and fraudulent actions of its employee, John O. Hunter, with appropriate action; or choose to do nothing, and violate your responsibilities as an elected public official." Finally, in response to the Board's request for details supporting his accusation, Berg mailed a registered letter to each member of the Board stating that the Board had until 5 p.m., Monday, February 27, 1984, to contact Berg. Failure to do so, the letter continued, would signal the Board's complicity in Hunter's fraud and prompt Berg to contact government regulatory agencies and legislative representatives.

correspondence. Indeed, the toll of his efforts is reflected in an unusually poor performance report evaluating Berg's work during 1984. Moreover, Berg's speech was a clear assault on Hunter's authority, see Pickering, 391 U.S. at 570, with whom he had close and frequent contact. Id. at 569-70. Such conduct could serve only to undermine Hunter's ability to maintain discipline and harmony among CLC's work-force, id. which, according to Berg's charges, was riddled with overpaid cronies

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The letter closes with Berg's taunt:

> You have your one-sided deposition from which to build Dr. Hunter's defense. Now try to explain to the public why the numbers don't match up!!!

[7] Accompanying his February 20, 1984 letter, sent by certified mail to each Board member, for example, Berg attached twelve pages of exhibits including a detailed comparison of CLC employee salaries and salary increases that he had collected and analyzed. Newspaper articles, minutes of CLC Board meetings, and internal CLC memoranda also were attached.

functioning in Hunter's patronage system. Like Myers's questionnaire in Connick, Berg's conduct can be described fairly as a "mini-insurrection."

The "increasing hostility and deteriorating relationship" between Berg and his supervisors further exacerbates the disruptive impact of his speech. Berg's contentious and embittered accusations demonstrate a heightened level of personal animus toward Hunter and the entire CLC administration that could only create an "atmosphere detrimental to workplace harmony and cooperation." Hesse, No. 87-1502, slip op. at 9-10.

Finally, although the emergence of Berg's public speech from the rubble of continuous personal disputes was not sufficient alone to defeat his claim at the Connick stage, the context within which an employee's speech arises is a relevant factor in the Pickering balance.

See Connick, 461 U.S. at 153. And one, in. this case at least, that limits the First Amendment interest at issue. Id. at 154. Berg was not a detached watchdog of local government. He was an embattled employee who touched upon a single matter of broader public concern amid persistent personal disputes. Taken together, then, the relevant Pickering factors tip in favor of the government.[8]

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[8] We also affirm Judge Marshall's disposition of Berg's remaining claims, including his Fourteenth Amendment challenge. Berg's position as an untenured college administrator employed on a year-to-year contract does not entitle him to due process protection. See Bishop v. Wood, 426 U.S. 341 (1976); Perry v. Sinderman, 408 U.S. 593 (1972); Hadley v. County of DuPage, 715 F.2d 1238 (7th Cir. 1983) (no property interest found where plaintiff had fourteen years of continuous and satisfactory performance even though individual board members assured plaintiff that he would retain his job), cert. denied, 465 U.S. 1006 (1984).

The judgment of the district court is

AFFIRMED.

A true Copy:

Teste:

_____

Clerk of the United States Court
of Appeals for the Seventh
Circuit

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM BERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 85 C 3355
	)	
DR. JOHN O. HUNTER, individually and as President of the Community College of Lake County, Illinois; et al.	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Prentice H. Marshall, District Judge

Plaintiff, William Berg, was the intramural athletic coordinator for the Community College of Lake County, Illinois, from January 1978 to his termination June 30, 1984. The termination was occasioned by a reorganization of the community college staff. Berg alleges that his termination was in fact in retaliation for his having spoken out on

matters of public interest to the college and the community which it serves, and therefore, was in violation of his right to free speech protected by the first amendment. Thus, he sues defendant Dr. John O. Hunter who was president of the community college at the time of the incidents in question and other administrative personnel and members of the Board of Trustees of the college under 42 U.S.C. Section 1983. Defendants have moved for summary judgment. The motion is granted.

The court of appeals for this circuit is Greenberg v. Kmetko, et al., ___ F. 2d ___ (7th Cir., 85-2104 and 2183, Feb. 3, 1987), has stated, "in determining whether plaintiff suffered retaliation for the exercise of his constitutional rights, the first question is whether his comments qualify as protected speech. This inquiry involves a question of law rather than

fact. Connick v. Myers, 461 U.S. 138, 148, n.7 (1983)."

The speech which plaintiff asserts was protected and which he asserts was the motivating cause of his discharge consists of a series of internal communications which began on May 18, 1983 with a grievance regarding his superior, Matthews, in which plaintiff charged Matthews with assault. This grievance culminated in a decision adverse to plaintiff rendered by the defendant Hunter in his capacity as president of the college. Thereafter, plaintiff appealed Hunter's decision and his appeal was denied on November 15, 1983.

In the meantime, he decided to sue the "judge", i.e., he filed a "concern" (which is a form of grievance) against Hunter on October 31, 1983. Following the denial of his appeal on November 15, 1983, he filed a "concern" against the ombudsman who had

been assigned to investigate his "concern" against Hunter. Then on January 4, 1984, he filed another "concern" against Hunter which was followed by a series of letters to the members of the Board of Trustees attacking Hunter. On February 29, 1984, the Board dismissed all of plaintiff's pending concerns/grievances.

On March 28, 1984 plaintiff was given 90 days notice of termination of his contract because of a reorganization which eliminated his job. Approximately a year later he brought this action.

We have reviewed carefully all of plaintiff's internal allegations which, he asserts, were entitled to first amendment protection. They are nothing but an extension of his personal clash with, animosity toward and grievance against Matthews. His allegations were not an effort to advise the governing authorities of the college of a matter of public

concern. The focus of the allegations was not to evaluate the college's performance but to continue his personal controversy. He spoke upon matters of only personal interest.

The timing of plaintiff's dispute with Hunter (which was initiated while his agrievance regarding Matthews was pending), the content of his complaints against Hunter of January 18 and February 20, 1984 (which were identical to the complaints he made against Hunter on October 31, 1983 following Hunter's denial of his grievance against Matthews) and the context of his complaints to the Board as disclosed by the entire record makes clear that plaintiff was engaged in the second, third and fourth rounds of his private dispute with Matthews. As between him and Matthews, he believed he should prevail, a not uncommon state of mind for a disputant. When he lost he sued the "judge",

i.e., Hunter, who had ruled against him in the first round of his dispute with Matthews.

In Connick v. Myers, 461 U.S. 138, 147 (1983), the Court stated:

> When a public employee speaks not as a citizen on matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior.

We conclude that plaintiff's speech was not protected and therefore he has no claim for retaliatory discharge under 42 U.S.C. Section 1983.

He also complains that he was terminated without a hearing. It is undisputed that he was not tenured. He was employed on a year to year contract. The exhibits aliunde his contract fail to show any legitimate expectancy of continued employment. They do not sustain his position

that he had a property interest in his job which was entitled to due process protection.

But if plaintiff was entitled to due process of law before being terminated, he was afforded the process due him. Within 30 days of the notice of his termination, he was entitled to request a meeting with the Board of Trustees to be convened 30 days thereafter for the purpose of reviewing his termination. He made no such request. We hold it is sufficient for a public agency such as this college to afford a terminated employee a prompt hearing by the governing multi-person board of the agency prior to the effective date of the termination.

Plaintiff also alleges that defendants conspired to deprive him of his civil rights in violation of 42 U.S.C. Sec. 1985(3) and that they conspired to violate his rights under Sec. 1983. Insofar as

the Section 1985(3) allegation is concerned, racial animus is an essential element of such a claim and none is alleged or present here. Insofar as the Section 1983 conspiracy is concerned, it fails because no Section 1983 violation has occurred.

The balance of plaintiff's complaint consists of pendent state claims. Because we dispose of the federal claims prior to trial, we lack jurisdiction to entertain the pendent claims. Accordingly, they should be dismissed for want of jurisdiction.

Defendants' motion for summary judgment is granted as to counts 1 through 6 of plaintiff's complaint and judgment will enter dismissing those counts with prejudice. Counts 7 through 10 are dismissed for want of pendent subject matter jurisdiction.

ENTER:

/s/ Prentice H. Marshall
Prentice H. Marshall
District Judge

DATED: March 18, 1987

APPENDIX C

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

September 21, 1988

Before
Honorable WILLIAM J. BAUER, Chief Judge
Honorable DANIEL A. MANION, Circuit Judge
Honorable MICHAEL S. KANNE, Circuit Judge

WILLIAM BERG, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 87-2050	)	
vs.	)	
DR. JOHN HUNTER, et al. Defendants-Appellees.	)	No. 85 C 3355 Prentice H. Marshall, Judge.

O R D E R

On consideration of the petition for rehearing with suggestion of rehearing in banc filed by the attorneys for plaintiff-appellant, no judge in active service has requested a vote thereon. All

of the judges on the original panel have voted to deny the petition for rehearing with suggestion for rehearing in banc.

IT IS HEREBY ORDERED that the aforesaid petition for rehearing with suggestion of rehearing in banc be and the same is hereby, **DENIED**

APPENDIX D

January 18, 1984

College of Lake County
19351 W. Washington
Grayslake, IL 60030

Attached please find a list of the indictable violations with which, as an employee and a taxpayer, I am charging the President of the College of Lake County. It is clear by his actions that John O. Hunter has exempted himself from any accountability for these violations of the public trust. Furthermore, he is choosing to hide behind the cloak of the Board in order to conceal his guilt. No employee has the right to conduct illegal activities while under contract to a public institution, not even a college president! I request that the Board hear the documented facts

which substantiate these charges, and act on them accordingly. Should the Board elect to allow this circumvention of justice, the public's trust in their duty elected representatives will certainly have been breached.

Had the President chosen to cooperate with the Board approved grievance procedure, instead of opting for the cowardly tactic of "stonewalling" the process through three consecutive ombudspersons over a 3 (three) month period, the Board might not be in the present situation, which is: Formally review the management malpractice and fraudulent actions of its employee, John O. Hunter, with appropriate action; or choose to do nothing, and violate your responsibility as an elected public official.

The most recent ombudsperson resigned from the process with the statement that I had only two options left: Go to the

Board or go to court. I have repeatedly stated that the grievance should be resolved internally. This is your decision now. My options, should the Board fail to fully exercise its authority to assure an unbiased and just verdict, are not limited to litigation. I will use every resource at my disposal to notify all regulatory, legislative, and licensing bodies about the mismanagement practices of this institution, its executive officers, and its Board.

Although the entire professional/administrative staff has been warned by the President against talking to the Board, I am challenging that ultimatum now, because it is the Board who is responsible for supervising the President. When current problems of enrollment, finances, and staff morale can be directly linked to the President, it is only the Board of

Trustees who can create change.

I am not a malcontent. The College has been a good place for me as an employee, and an even better place in which students can learn. My track record of accomplishment over seven years, without making waves, should indicate the gravity with which these charges are made.

Again let me reinterate [sic]: it is your responsibility to review these charges on behalf of the taxpayers who elected you. It would be better to resolve this matter internally in order to minimize embarrassment to the institution. Either way, justice will be done.

I anticipate your direct response in the near future.

Sincerely,

(NOTE: THE ATTACHMENT TO THIS LETTER IS SET FORTH IN THE TEXT, PP. 7-10, INFRA)

William A. Berg
Intramural/Recreational Coordinator
College of Lake County

APPENDIX E

February 20, 1984

Board of Trustees
College of Lake County
19351 W. Washington St.
Grayslake, Illinois 60030

Dear Board Member:

In response to your request for substantive detail regarding my grievance against Dr. Hunter for fraud and management malpractice at the College of Lake County, I am forwarding the following documentation:

1. A combined listing of administrative and professional-administrative salaries for the years 1981-82 and 1982-83.
2. An article from the Waukegan News-Sun, dated June 23, 1982, and an article from the College of Lake County Connections, dated June 30, 1982, and an administrative

salary and fringe benefit memo, dated June 23, 1982.

The focal point of this information is the discrepancy of Dr. Hunter's actual increase for administrative and professional-administrative salaries, when compared with his so-called 3.5% increase, as publicly stated.

The blatant criminal deception by Dr. Hunter when publicly announcing the financially contracted agreement with public employees, representing a "3.5% increase", during a critical period of deficit budgeting ($650,000.00 college budget deficit), shows his disregard for the integrity of the College of Lake County and the office of the president.

The enclosed information deals specifically with my first charge against Dr. Hunter regarding College of Lake County Board Policy 933. The magnitude of each violation should

be addressed in an open forum of discussion ;with the Board in order to expedite justice. I am producing the attached evidence to demonstrate to you that these charges, individually or collectively, are not creations of my imagination. It is the Board's responsibility to provide a forum the complete exploration of thses [sic] allegations, not to protect the president from a checks and balances system. He, too, is accountable as must be the members of the Board!

I am allowing you until 5 p.m., Monday, February 27, 1984, to contact me regarding your intentions concerning my request for a forum.

If I fail to hear from you by this date I will understand that you support the conspiracy of the President Hunter's fraudulent actions involving public funds.

Your lack of action will initiate my contact

on Tuesday, February, with government regulatory agencies, and legislative representatives.

This fraud is calculated in the tens of thousands of dollars per year while Dr. Hunter develops a patronage system. What else would you call it when everyone knows that they're getting paid too much by the boss, and know one says anything?

In closing: you have your one-sided deposition from which to build Dr. Hunter's defense. Now try to explain to the public why the numbers don't match up!!!

Hope to hear from you soon.

[Signature] Bill Berg

Bill Berg
Intramural-Recreation Coordinator
223-6601 Ext. 482

cc: Dr. John O. Hunter

(NOTE: the attachments to this letter are omitted from this appendix)